

ESTATE OF PAMELA GILLIS
CROCKETT (ROPP),
Unallotted Quechan No. 334,
IP PH 112I 85

: Order Declining Interlocutory
: Certification of Legal Questions
:
: Docket No. IBIA 86-29-Q
:
: March 11, 1986

On February 21, 1986, the Board of Indian Appeals (Board) received an interlocutory certification of three legal questions from Administrative Law Judge S. N. Willett. The questions relate to the legal effect of the execution of a deed for property which the grantor did not then own, but later acquired. The questions were certified to the Board so that appropriate action could be taken in a pending Indian probate proceeding.

In Estate of James Largo, 12 IBIA 224, 91 I.D. 185 (1984), the Board held that Indian Probate Administrative Law Judges have authority to certify controlling questions of law to the Board on an interlocutory basis under appropriate circumstances in accordance with 43 CFR 4.28. Section 4.28 states in its entirety:

There shall be no interlocutory appeal from a ruling of an administrative law judge unless permission is first obtained from the Appeals Board and an administrative law judge has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Board.

The question of interlocutory certifications was addressed further in Estate of Neal Kay Manuel, 13 IBIA 58 (1984). In that case the Board held at page 59:

In order to conserve judicial resources, to expedite final resolution of cases, and to prevent the cost and delay of successive appeals, interlocutory appeals in both judicial and administrative forums are generally reserved for those extraordinary circumstances where prompt appellate consideration is essential, as, for example, in those situations in which the ruling or decision by the trial court or Administrative Law Judge

threatens a party with immediate and serious irreparable harm which, as a practical matter, cannot be redressed on appeal. In those cases in which any error in the interlocutory ruling or decision, as well as any other error that might be alleged, can be considered and corrected on appeal, an interlocutory appeal is generally not appropriate.

The Board holds that the interlocutory questions certified in this case fall within the category of those issues that can, if necessary, be considered and redressed on appeal. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, interlocutory review of the questions certified to the Board in this matter is denied. The case shall remain with Judge Willett for decision.

Jerry Muskrat
Administrative Judge

Bernard V. Parrette
Alternate Member